

RECOPY

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 91

ALBERT LEE,

Petitioner.

vs.

STATE OF MISSISSIPPI,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF MISSISSIPPI

BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

Statement of the Case

In view of the fact that counsel for petitioner has made a full statement of the facts and for the sake of brevity, we will forego making a restatement, save for this correction in counsel for petitioner's statement. On page 5 of petitioner's brief, it is stated:

"On his direct examination, the petitioner made no mention of any one other than the two plain clothes officers being present at the time he was struck and threatened; but upon cross-examination in answer to the District Attorney's question of whether the jailer was present, the petitioner stated: 'I don't recall, I am pretty sure he was in there'. (R. 16.)"

The petitioner's testimony is as follows:

"Q. Where was the jailer?

A. He was sitting in there.

Q. Mr. Young?

A. I don't know who he was.

Q. What was he doing?

A. I don't recall, I am pretty sure he was in there.

Q. Just sitting there at the desk?

A. Yes, sir." (E. 16)

Mr. J. A. Young, the jailer, testified that although the petitioner's face was familiar, he did not have any independent recollection of the petitioner being in jail at any specific time. (R. 20) Later in the examination the police department records were brought and from these records it was shown that the witness was on duty June 7, 1944, the date in question, (R. 25 and 26), and he testified that petitioner had never been struck in his office, (R. 24).

BRIEF AND ARGUMENT

POINT I

That: under the Facts Disclosed in the Transcript of Record, the Admission in Evidence of the Alleged Confession as Evidence of the Petitioner's Guilt in Order to Obtain a Conviction in the Trial Court Amounted to a Denial of Due Process of Law as Guaranteed by the Fourteenth Amendment to the United States Constitution.

A. The Supreme Court of the United States is not precluded by the verdict of the jury or the decision of the highest state court from determining whether a confession, used as evidence of the accused's guilt, was obtained under such circumstances of coercion and duress as to make its use in evidence a denial of due process of law.

Under the authorities cited by the petitioner, the above statement is no longer open to question. The evidence in the instant case upon the part of the State shows that the confession was free and voluntary and was not obtained by means of torture, violence, threats, fear, favor, prolonged questioning, or any other kind of coercion. Taking the testimony of petitioner in this case as true, the authorities cited by petitioner are not applicable, especially the cases of *Ashcraft v. State of Tennessee*, 322 U. S. 143, 88 L. Ed. 1192, 64 Sup. Ct. 921; *Brown v. State of Mississippi*, 297 N. S. 278, 80 L. Ed. 682, 56 Sup. Ct. 461; *Chambers v. State of Florida*, 309 U. S. 227, 84 L. Ed. 716, 60 Sup. Ct. 472; *Malinski v. State of New York*, 324 U. S. 401, 89 L. Ed. 1029; *Ward v. State of Texas*, 316 U. S. 547, 86 L. Ed. 1663, 62 Sup. Ct. 1139; *White v. State of Texas*, 310 U. S. 530, 84 L. Ed. 1342, 60 S. Ct. 1032.

The petitioner, although he testified to threats, (R. 13), further testified that he did not admit he did it, (R. 13, 16, 17). His testimony with reference to fear or duress is as follows:

"Q. But you were not afraid enough to tell them you did it, isn't that correct?

A. Yes, sir, that is right.

Q. Then that afternoon, when you were down talking to Captain Rogers, who was treating you nice, then you got afraid and told it?

A. I didn't tell him I did it. (R. 17)"

The trial court exercised due precaution on the preliminary inquiry as to the admissibility of the confession.

The rule in Mississippi as announced in the case of *Ellis vs. State*, 65 Miss. 44, 3 So. 188, 7 Am. St. Reporter 634, as to the admission of confessions in evidence is as follows:

"Before a confession is received in evidence against a defendant in a criminal trial, it should be shown that it was voluntary, that is to say, made without the influence of hope or fear being exerted on the accused by any other person. Whether it was so made or not, is a preliminary matter for the court and not for the jury to determine. The jury have nothing to do with the competency of evidence; that is a question exclusively for the determination of the court. The court should decide in the first place, after investigation, whether a proposed confession shall be heard by the jury or not, and if it is deemed competent by the court; and is permitted to go to the jury, they are the exclusive judges of its weight

and value as evidence. When it is proposed to introduce in evidence, a confession of the accused against himself, the court should, upon a preliminary investigation, conducted out of the presence and hearing of the jury, if requested by the defendant, determine whether it is competent or not. If satisfied after hearing all the testimony pertinent to the inquiry, that the confession is admissible, it should go to the jury, but unless it plainly appears that it was free and voluntary — if there is a reasonable doubt against its being free or voluntary—it should be excluded from the jury. *Simmons v. The State*, 61 Miss. 243."

This rule has been consistently followed in this state. The court in the original opinion in the instant case, *Lee vs. State*, Miss., 29 So. (2d) 211, transcript of record 30 and 31, said:

"Appellant was placed in jail and on the afternoon of the following day he was interrogated by two officers to whom (fol. 302) he confessed that it was he who had broken in the room and struck the victim three times while she was asleep in bed; that he watched and waited outside while she prepared for bed, and that his intent was to ravish. There is no question whether any coercion was used by these officers, but, on the contrary, defendant testified they had 'been nice to him' and had explained that his statement would be used against him and that such statement would be wholly voluntary. The details of the confession had never been suggested or known by anyone other than the defendant. When he was requested to sign the statement after its reduction to writing, he refused to do so stating that during the morning two officers in the room and presence of the jailer 'had treated him kind of bad'. The interview was thereupon closed and his signature was not insisted upon.

"The defendant testified that during the morning referred to, two plain clothes men had brought him to the office of the jailer and demanded that he confess the crime, and struck him twice with the warning that if he went 'down stairs and said he didn't do it, it will be mighty bad for you.' The said detectives were not introduced and the jailer denied that this incident occurred. The trial judge thereupon admitted the confession into the record.

"The conduct of the two detectives, if true, would of course be indefensible and would warrant and receive our condemnation. Yet the issue of fact as well as credibility was for the trial judge upon such preliminary qualification, and we are not willing to disturb his conclusion. *Street v. State*, 26 So. (2d) 678."

In the Street Case it was held:

"A confession is admissible only when freely and voluntarily made, without expectation of any promised benefit, fear of any threatened injury, or exertion of any improper influences.

"Evidence of confession in order to be admissible must be so strong as to exclude every reasonable doubt that it was freely and voluntarily made, and not procured under threat of punishment, or promise of reward.

"Confessions induced by fear though not aroused by spoken threats, are involuntary and therefore inadmissible, and such fear may arise solely from conditions and circumstances surrounding the confessor." (Syllabus 1, 2, and 3, 26 So. (2d) 678.)

and with reference to the admissibility of the confession where the evidence was conflicting, the court said:

"We have repeatedly held that where evidence on the admissibility of a confession is conflicting, this

Court will not disturb the trial court's conclusion, unless clearly contrary to the evidence. *Stubbs v. State*, 148 Miss. 764, 114 So. 827; *Buckler v. State*, 171 Miss. 353, 157 So. 353; *Wohner et al. v. State*, 175 Miss. 428, 167 So. 622; *Jones v. State*, 58 Miss. 349; *Ellis v. State*, 65 Miss. 44, 3 So. 188, 7 Am. Rep. 634; *Brown v. State*, 142 Miss. 335, 107 So. 373; *Cooper v. State*, 194 Miss. 592, 11 So. 2d 207; *Parker et al. v. State*, 194 Miss. 895, 13 So. 2d 620. Under the proof in this case it is manifest from the record that the trial judge was justified in holding that the confession was freely and voluntarily made, to the exclusion of every reasonable doubt, uninfluenced by threat or promise of reward, or improper circumstances, and we find no error in its admission against appellant. The case of *Parker v. State, supra*, was appealed to the Supreme Court of the United States, and affirmed in 320 U. S. 705, 64 S. Ct. 69, 88 L. Ed. 413."

In the case of *Lisenba v. State of California*, 314 U. S. 219, 86 L. Ed. 166, Sup. Ct. 280, the court said:

"There are cases, such as this one, where the evidence as to the methods employed to obtain a confession is conflicting, and in which, although denial of due process was not an issue in the trial, an issue has been resolved by court and jury which involves an answer to the due process question. In such a case we accept the determination of the triers of fact, unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.

"Here judge and jury passed on the question whether the petitioner's confessions were freely and voluntarily made, and the tests applied in answering that question rendered the decision one that also answered the question whether the use of the confessions involved a denial of due process; this not

withstanding the issue submitted was not eo nomine one concerning due process. Furthermore, in passing on the petitioner's claim, the Supreme Court of the State found no violation of the Fourteenth Amendment. Our duty then is to determine whether the evidence requires that we set aside the finding of two courts and a jury and adjudge the admission of the confessions so fundamentally unfair, so contrary to the common concept of ordered liberty as to amount to a taking of life without due process of law.

"In view of the conflicting testimony, we are unable to say that the finding below was erroneous so far as concerns the petitioner's claims of physical violence, threats or implied promises of leniency."

With reference to coercion, the court further said:

"He exhibited a self-possession, a coolness, and an acumen throughout his questioning, and at his trial, which negatives the view that he had so lost his freedom of action that the statements made were not his but were the result of the deprivation of his free choice to admit, to deny, or to refuse to answer.

"The judgments are affirmed."

In *Buchalter v. New York*, 319 U. S. 427, 87 L. Ed., the court said:

"As we have recently said, 'it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the result set aside, and that it be sustained not as a matter of speculation but as a demonstrable reality.' " (Citing *Adams v. United States*, 317 U. S. 269, 281, 87 L. Ed. 268, 275, 63 S. Ct. 236, 143 ALR 435.)

POINT II

That: The Decision of the Supreme Court of Mississippi in Refusing to Reverse the Trial Court for Having Allowed the Alleged Confession to be Introduced as Evidence of the Petitioner's Guilt in Order to Obtain His Conviction; and in Basing Such Refusal Solely upon the Ground that the Petitioner had Denied Making the Confession, is in Itself a Denial of Due Process of Law as Guaranteed by the Fourteenth Amendment to the United States Constitution."

Counsel for petitioner argues that this case is similar and should be governed by the case of *Brown vs. State of Mississippi*, 297 U. S. 278, 80 L. Ed. 682. In this case the evidence fully established that the confessions were obtained by coercion, where the court said that extreme brutality was resorted to. This case was affirmed by the Supreme Court of Mississippi on the ground of criminal procedure in that petitioner's attorneys failed to move to exclude the confession. (Petitioner's brief, pages 21 and 22.)

Counsel for petitioner further says:

"Petitioner would also call to the Court's attention that the decision of the Supreme Court of Mississippi condones the use of a confession *known* by the prosecuting officers to be a result of coercion to be used at the trial to obtain a conviction of the accused; which petitioner submits has been held by this Court, in its previous decisions, to be a denial of due process of law. In *Mooney v. Holohan*, 294 U. S. 103, 112, 79 L. Ed. 791, 794, 55 S. Ct. 340, the Supreme Court held that the constitutional requirement of due process was not satisfied where a conviction was obtained by the presentation of testimony

known by the prosecuting officers to be false, saying: * * * *

This statement of counsel is not supported by the record. The only evidence that petitioner was struck or threatened is his own testimony, which is not supported by any other facts or circumstances. Counsel for petitioner in the trial court made no effort to locate or identify those two unknown officers who struck and threatened petitioner. To permit the defendant in the trial court to say that he was threatened by some unknown person, and his testimony not supported by any other facts or circumstances, would be putting too great a burden upon the State's attorney, as it would be impossible to rebut. Then, too, it is to be remembered in this case that the petitioner contended throughout that he never did admit he did it.

CONCLUSION

Under the record in this case and the authorities cited, it is submitted that the petitioner was denied none of his constitutional rights.

Respectfully submitted,
GREEK L. RICE, Attorney General
By RICHARD OLNEY ARRINGTON,
Assistant Attorney General

CERTIFICATE

I, Richard Olney Arrington, counsel for respondent, hereby certify that I have this day mailed postage pre-paid, a true and correct copy of the above and foregoing brief to Honorable Forrest B. Jackson, counsel for petitioner, at his post office address at Jackson, Mississippi.

This is the 14th day of October, 1947.

RICHARD OLNEY ARRINGTON,
Assistant Attorney General

SUPREME COURT OF THE UNITED STATES

No. 91.—OCTOBER TERM, 1947.

Albert Lee, Petitioner, v. State of Mississippi, } On Writ of Certiorari to the Supreme Court of the State of Mississippi.

[January 19, 1948.]

MR. JUSTICE MURPHY delivered the opinion of the Court.

This case involves a question of procedure under the due process clause of the Fourteenth Amendment of the United States Constitution. Does a defendant in a state criminal proceeding lose the right to contend that a confession was coerced because of his testimony that the confession was in fact never made?

Petitioner, a 17-year-old Negro, was indicted by a grand jury in Mississippi on a charge of assault with intent to ravish a female of previous chaste character. During the course of the trial, the state offered the testimony of two city detectives as to an alleged oral confession obtained by them from petitioner. Objection was made that this confession had been secured as the result of duress, threats and violence inflicted upon petitioner by two unidentified police officers several hours prior to the confession. The jury-retired and a preliminary hearing was held before the trial judge as to the voluntariness of this confession. After various witnesses appeared, including the petitioner himself, the judge concluded that the confession was voluntary and that the testimony in relation thereto was admissible. This testimony proved to be the crucial element leading to the jury's conviction of petitioner. His sentence was fixed at 18 years in prison.

The Mississippi Supreme Court affirmed the conviction on appeal, rejecting petitioner's contention that the introduction of the testimony in question contravened his rights under the Fourteenth Amendment. It stated that the conduct of the two unidentified officers alleged to have struck and threatened petitioner was, if true, indefensible and warranted condemnation. But it felt that "the issue of fact as well as credibility was for the trial judge upon such preliminary qualification, and we are not willing to disturb his conclusion." — Miss. —, —, 29 So. 2d 211, 212.

This constitutional contention was treated quite differently by the court on the filing of a suggestion of error. It found that petitioner's testimony at the preliminary hearing that he had been threatened prior to making the confession was entirely undisputed in the record. But it also found that petitioner had steadfastly testified, both at the preliminary hearing and at the trial on the merits before the jury, that he did not in fact admit to the city detectives that he had committed the crime. The court then stated: "If the accused had not denied having made any confession at all, we would feel constrained to reverse the conviction herein because of the fact that his testimony as to the threat made to him during the forenoon by the plain clothes men is wholly undisputed, the jailer not having been asked about this threat, and having testified only that he was not struck by anyone in his presence after his arrest for this crime. But, we think that one accused of crime cannot be heard to say that he did not make a confession at all, and at the same time contend that an alleged confession was made under the inducement of fear." — Miss. —, —, 30 So. 2d 74, 75. The suggestion of error was accordingly overruled.

The incomplete record before us precludes our determination of whether petitioner did deny in the trial

court that he had confessed the crime.¹ But assuming that he did so testify, we cannot agree with the court below that he was thereby estopped from asserting his constitutional right to due process of law. The important fact is that the oral confession was introduced, admitted and used as evidence of petitioner's guilt. Not only may this confession have been influential in inducing the jury's verdict, but it formed an essential part of the evidentiary basis of the conviction now under review. His alleged denial of the confession went only to the original issue of whether he actually made the confession, an issue that is no longer open. That question was at most a disputed one; but the jury resolved the matter against petitioner and, like the court below, we accept that determination. The sole concern now is with the validity of the conviction based upon the use of the oral confession.

The due process clause of the Fourteenth Amendment invalidates a state court conviction grounded in whole or in part upon a confession which is the product of other than reasoned and voluntary choice.² A conviction re-

¹ The transcript of the trial on the merits is not before us. At the preliminary hearing on the voluntariness of the confession, the transcript of which is before us, petitioner stated in regard to the alleged confession: "I don't know what all he asked and all I said, but I didn't admit I did it." He also denied having confessed various details of the crime. Such testimony, however, might be construed as nothing more than a layman's inexact way of stating that his answers did not amount to a voluntary confession. But in the absence of the complete record, we express no opinion on the matter.

² *Brown v. Mississippi*, 297 U. S. 278; *Chambers v. Florida*, 309 U. S. 227; *Canty v. Alabama*, 309 U. S. 629; *White v. Texas*, 309 U. S. 631, 310 U. S. 530; *Lomax v. Texas*, 313 U. S. 544; *Vernon v. Alabama*, 313 U. S. 547; *Lisenba v. California*, 314 U. S. 219; *Ward v. Texas*, 316 U. S. 547; *Ashcraft v. Tennessee*, 322 U. S. 143,

sulting from such use of a coerced confession, however, is no less void because the accused testified at some point in the proceeding that he had never in fact confessed, voluntarily or involuntarily. Testimony of that nature can hardly legalize a procedure which conflicts with the accepted principles of due process. And since our constitutional system permits a conviction to be sanctioned only if in conformity with those principles, inconsistent testimony as to the confession should not and cannot preclude the accused from raising the due process issue in an appropriate manner. *White v. Texas*, 310 U. S. 530, 531-532. Indeed, such a foreclosure of the right to complain "of a wrong so fundamental that it made the whole proceeding a mere pretense of a trial and rendered the conviction and sentence wholly void," *Brown v. Mississippi*, 297 U. S. 278, 286, would itself be a denial of due process of law.

The judgment below must be reversed. Since the Mississippi Supreme Court upheld the conviction solely because it thought petitioner was not entitled to raise the constitutional issue, we remand the case to that court so that it may definitively express its views on that issue.

Reversed.

327 U. S. 274; *Lyons v. Oklahoma*, 322 U. S. 596; *Malinski v. New York*, 324 U. S. 401; *Haley v. Ohio*, — U. S. —.

See, in general, Boskey and Pickering, "Federal Restrictions on State Criminal Procedure," 13 U. of Chi. L. Rev. 266, 282-295.